
MANAGEMENT DIRECTIVE

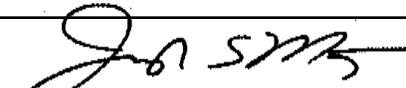
590.2
Amended
Number

COMMONWEALTH OF PENNSYLVANIA GOVERNOR'S OFFICE

Subject:

Confidential Positions and Employees

By Direction Of:


Joseph S. Martz, Secretary of Administration

Date:

March 8, 2006

Act 195, the Public Employee Relations Act, requires that employees deemed confidential under the Act not be represented by a labor organization. This directive contains criteria and procedures by which agencies determine, within established numerical constraints, which of their positions and employees shall be designated confidential. This amendment is being reissued, with minor changes, specifically to update this directive.

1. **PURPOSE.** To outline responsibilities and procedures for the designation of confidential positions and employees.

2. **SCOPE.** This directive applies to all agencies under the Governor's jurisdiction.

3. **POLICY.**

a. *Act 195, the Public Employee Relations Act*, precludes a "confidential employee," as the term is defined in the Act, from being represented by a labor organization. To make application of that definition more effective, the Commonwealth has reached agreement with the appropriate employee representatives on both the number of positions in each agency that may be designated confidential and on the procedures for changing the confidential designation between positions.

b. In accordance with guidelines in Section 6.a., agencies may designate positions as confidential, up to their authorized maximum number of confidential positions. Prior approval of the Bureau of Labor Relations, Office of Administration, is required only if an agency designation would exceed its authorized maximum.

4. **DEFINITIONS.**

a. **Confidential Employee.** *The Public Employee Relations Act* defines as confidential ". . . any employee who works:

"(1) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or

"(2) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer."

b. Confidential Position. One of a specific number of positions designated confidential by an agency in accordance with an agreement between the Commonwealth and the appropriate employee representative. This refers to an individual position and its corresponding position number, not the employee occupying the position.

c. Work Title. A concise description of the functions of an employee; e.g., secretary to labor relations coordinator.

5. RESPONSIBILITIES.

a. Office of Administration shall:

(1) Establish guidelines for the designation of confidential personnel.

(2) Determine with the appropriate employee organization the number of authorized confidential positions for each agency and communicate those numbers to the appropriate agencies.

(3) Review all proposed designations which would increase the number of confidential positions in an agency above its authorized figure, coordinate requested changes in an agency's authorized maximum number of confidential positions with the appropriate employee organization, and notify agencies of the approval or denial of their request to increase their authorized maximum number of confidential positions.

(4) Review, as necessary, specific confidential positions with agencies.

b. Agencies shall:

(1) Determine, within authorized maximums, the positions to be designated confidential, using the guidelines in Section 6.a.

• (2) Record on the SAP HR/Payroll System the position data and confidential status of each position.

(3) Review confidential positions quarterly and correct records, as necessary.

(4) Adjust, when required by Section 6.d., the seniority dates of employees who lose their confidential status.

(5) Forward proposed designations which would increase the number of confidential positions beyond authorized maximums to the Bureau of Labor Relations.

6. PROCEDURES.

a. The following guidelines will be used by agencies to determine whether a position should be designated confidential within an agency's authorized number of confidential positions. The criterion for determining confidentiality is whether an employee has access to position papers, evaluation papers, evaluations of data, and recommendations that are used by management in collective bargaining. Access to raw personnel or fiscal data that might be used in formulating management policy is not a determinant. Confidential positions should normally be restricted to those of the immediate clerical, secretarial, and administrative staff of the following individuals:

(1) Agency Heads.

(2) Deputies directly responsible for labor relations.

(3) Key officials who have a significant involvement with labor relations.

(4) Agency Human Resource Directors and Labor Relations Coordinators. •

(5) Institution heads and institution Human Resource Officers and Labor Relations Coordinators, normally limited to one employee per official. •

(6) Regional and district administrators who deal directly with labor relations, normally limited to one employee per official. •

b. Changes to Confidential Positions Within an Agency's Authorized Number. Agencies may designate positions as confidential, delete confidential status from positions, and transfer confidential status between positions without prior approval of the Bureau of Labor Relations. Designations may, however, be reviewed by the Bureau of Labor Relations on a post-audit basis. The appropriate changes must be made on the SAP HR/Payroll System to reflect each position's status. •

c. Additions to Confidential Positions Above an Agency's Authorized Number.

(1) Agencies must obtain prior approval from the Bureau of Labor Relations to increase the number of confidential positions above their authorized maximum. The following information must accompany each request:

(a) Name (if position is filled).

(b) Position Number.

(c) Classification.

(d) Work Title.

(e) Location.

(f) Justification.

(2) The Bureau of Labor Relations will notify the requesting agency of approval or disapproval of a request. If approved, the agency should input the appropriate information into the SAP HR/Payroll System. •

(3) When an incumbent of such position is a union member, union dues deductions must continue until approval is received by the agency from the Bureau of Labor Relations.

d. Confidential Employees. Employees do not accrue contractual seniority credits while occupying a confidential position. An employee who transfers or is promoted or demoted from a confidential position to a nonconfidential position carries to the nonconfidential position any seniority credits accrued prior to service in the confidential position. However, if an employee's confidential status is removed by the agency in accordance with Section 6.b., the employee will receive seniority credit for service as a confidential employee. Agencies are responsible for making this adjustment at the time confidential status is removed.

This directive replaces, in its entirety, *Management Directive 590.2* dated January 29, 1997.